

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VOLKER REIFFENRATH,
DETLET PAULUTH and HERBERT PLACH

Appeal No. 1999-0310
Application No. 08/225,267

ORDER REMANDING TO EXAMINER and ORDER DENYING ORAL HEARING

An amendment after final was filed by appellants on April 16, 1996 (Paper No. 18). The Advisory Action mailed May 8, 1996 (Paper No. 19) indicated that such amendment would not be entered upon filing an appeal. Appellants filed a "Renewed Petition Under 37 CFR 1.181" on June 11, 1996 (Paper No. 22 ½). A Decision on Petition mailed December 11, 1996 (Paper No. 25) required the examiner to prepare a supplemental Examiner's Answer indicating the status of claim 9 as amended by the "Amendment

Appeal No. 1999-0310
Application 08/225,267

Under 37 CFR 1.116" of April 16, 1996 (Paper No. 18). Page 2 of the examiner's supplemental Examiner's Answer mailed January 27, 1997 (Paper No. 26) stated that "[t]he amendment after final rejection filed on April 16, 1996 has been entered." A review of the record indicates that this amendment has not been physically entered.

As stated above, according to page 2 of the supplemental Examiner's Answer mailed January 27, 1997 (Paper No. 26), "[t]he amendment after final rejection filed on April 16, 1996 has been entered." Even though page 3 of this same Examiner's Answer states "[t]he copy of the appealed claims contained in the Appendix to the brief is correct," it is noted that the language of claim 9 in the Appendix of the Substitute Brief on Appeal filed May 24, 1996 (Paper No. 22) differs from its last amended version.

In addition, an Examiner's Answer (Paper No. 23) was entered June 24, 1996. On March 27, 1997, appellants filed a Request for Oral Hearing (Paper No. 27) and a Reply Brief (Paper No. 28). Pursuant to 37 CFR § 1.194(b) (1997), the Request for Oral Hearing was due two months from the date of the Examiner's Answer. The due date for this request was August 24, 1996. Therefore, the Request for Oral Hearing was not timely filed.

Appeal No. 1999-0310
Application 08/225,267

Accordingly, it is

ORDERED that the application is remanded to the examiner:

1. for entry of the amendment filed April 16, 1996 (Paper No. 18) and for written notification to appellants of the action taken;

2. for issuance of a supplemental Examiner's Answer which contains a correct copy of claim 9, or for notification to appellants to submit a new Appendix to the Appeal Brief which contains corrected claim 9; and it is

FURTHER ORDERED that the Request for Oral Hearing filed March 27, 1997 (Paper No. 27) is denied as being not timely filed. The appeal will be assigned for consideration and decision on the written record.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____
CRAIG FEINBERG
Program and Resource Administrator
(703) 308-9797

CF:psb

Appeal No. 1999-0310
Application 08/225,267

cc: Millen, White, Zelano and Branigan
Arlington Courthouse Plaza 1
Suite 1400
2200 Clarendon Boulevard
Arlington, VA 22201